



STATE OF DELAWARE


PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

February 14, 2017

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Shona Marshall, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE APPLICATION PALMCO POWER DE, LLC FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (SUBMITTED SEPTEMBER 19, 2016; FILED JANUARY 23, 2017) - PSC DOCKET No. 16-0929

Background

On September 19, 2016 Palmco Power DE, LLC (the "Company" or "Palmco") submitted an application (the "Application") with the Delaware Public Service Commission (the "Commission") for an Electric Supplier Certificate ("ESC") to provide electric supply services in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act") and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").¹

Application

The Company's original filing was submitted on September 19, 2016 but the submitted Application did not meet the minimum filing requirements (MFR's). In a letter dated September 28, 2016, Staff requested the Company file a copy of the FERC Approval as a Marketer confirmation, professional resumes for the officers of the Company, a description of investigative actions taken against the Company related to its sales and marketing, including remedies and prevention measures for Delaware operations, as well as contract modifications. In the response dated October 31, 2016, the Company provided answers to Staff's questions, documents to support its Application, and a revised customer contract. In a letter dated November 23, 2016, Staff requested additional revisions to the customer contract and the publication of public notices in two newspapers having general circulation throughout the state of Delaware. The documents were received December 22, 2016. The renewed business license was received January 23, 2017. This information satisfies the MFR's for this Application.

¹ Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

Review and Analysis

Authority to do Business in Delaware

The Company is a limited liability company formed under the laws of the state of Delaware. The Company provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware and it provided its Delaware business license issued June 23, 2016 and renewed January 11, 2017.

Resident Agent

The Company supplied the contact information for a Delaware Registered Agent listed in the application as Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

Compliance with Regional Requirements

The Company provided proof of PJM membership. The Company provided a copy of the FERC approval as a marketer.

Financial, Operational, Managerial and Technical Ability

The Company provided independently audited copies of the Consolidated Balance Sheet, Consolidated Statement of Income, Consolidated Statement of Cash Flows, and Consolidated Member's Equity Statement for Columbia Utilities, LLC the parent company, and Palmco for the period ended December 31, 2015 as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. Staff believes that the confidential financial statements show substantial evidence of the Applicant's ability to provide electric supply services in the State of Delaware.

The Company anticipates serving Residential, Commercial, and Industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Company's application states that it is authorized to do business in the states of Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania. Staff was able to confirm the Company's presence in these states by conducting an internet search of the Secretary of State Websites, as well as the state commission websites for each state. The Applicant was pending licensure in the state of Michigan when the Application was submitted. The Company's listed affiliates include: Columbia Utilities Power, LLC, Palmco Power NJ, LLC, Palmco Energy NJ, LLC, Palmco Power PA, LLC, Palmco Energy PA, LLC, Palmco Power OH, LLC, Palmco Energy OH, LLC, Palmco Power IL, LLC, Palmco Power MA, LLC, Palmco Power CT, LLC, Palmco Energy MD, LLC, Palmco Power MD, LLC, Palmco Power FL, LLC, Palmco Energy FL, LLC, Palmco Power GA, LLC, Palmco Energy GA, LLC, Palmco Power IN, LLC, Palmco Energy IN, LLC, Palmco Power KY, LLC, Palmco Energy KY, LLC, Palmco Power VA, LLC, Palmco Energy VA, LLC, Palmco Power DC, LLC, Palmco Energy DC, LLC, Palmco Power CA, LLC, Palmco Energy CA, LLC, Palmco Power NY, LLC, Palmco Energy NY, LLC, Palmco Power ME, LLC, Palmco Energy ME, LLC, Palmco Power NH, LLC, Palmco Energy NH, LLC, Palmco Power RI, LLC, Palmco Energy RI, LLC, Palmco Power MI, LLC, and Palmco Energy MI, LLC. The Company has withdrawn an application for affiliate Palmco Power VA, LLC in the state of Virginia based on business considerations on July 28, 2016. The Company has withdrawn applications for affiliates PALmco Power MI, LLC and PALmco Energy MI, LLC in the state of Michigan based on business considerations on September 21, 2016.

During Staff's review of the Company's practices, Staff discovered investigations conducted in multiple jurisdictions related to sales and the marketing practices of various affiliates of Palmco. The investigations alleged practices of deceptive pricing, "slamming", price gouging, and the marketing and enrollment processes of Palmco. Staff requested summaries of each pending settlement and investigation, as well as steps taken to rectify the problems alleged. The Company submitted the requested information and identified strategies enacted to prevent the alleged acts from re-occurring.

Connecticut Public Utilities Regulatory Authority ("CPURA") began an investigation into the marketing and enrollment practices of Palmco Power CT, LLC ("Palmco CT") on February 25, 2015. CPURA also sought to investigate the company's compliance with record retention requirements. The Office of Consumer Counsel indicated that they were seeking revocation of Palmco CT's license to operate in Connecticut as well as refunds and any penalties that may be appropriate. The Company states that the investigation is ongoing and Palmco is cooperating with CPURA.

The New Jersey Attorney General Office filed a complaint against Palmco Power NJ, LLC and Palmco Energy NJ, LLC (collectively, "Palmco NJ") in New Jersey Superior Court on May 28, 2014. Numerous complaints were received from customers following the polar vortex, who alleged promises of savings by switching to the third party energy supplier. Customers alleged misrepresentation of competitive monthly pricing and/or guarantees of lower utility bills. The Complaint filed against Palmco NJ also alleged switching gas and electric customer accounts without customer knowledge (slamming) among other "unconscionable commercial practices," in violation of New Jersey consumer protection laws and New Jersey Board of Public Utilities' regulations. In response to Staff's inquiry, the Company states that Palmco NJ entered into a settlement agreement with the New Jersey Attorney General's office on May 23, 2016. Included in the terms of the settlement were changes to the marketing materials and practices of the Palmco NJ as well as a payment of \$500,000 for restitution and civil penalties on behalf of customers.

Staff's review of the matter returned articles published in June of 2016² that provided details of a \$5.28 million settlement of a complaint filed by the New Jersey Attorney General's Office, the Board of Public Utilities, and the Division of Consumer Affairs, in which Palmco NJ did not admit to any wrongdoing. A Palmco NJ representative stated that the company opted to settle the case so that focus could be directed to delivering quality products and services to its customers. The settlement includes restitution of up to \$4.5 million and \$788,254.54 in civil penalties, attorney fees, and investigative costs. The complaint alleged the misrepresentation of pricing mechanisms, savings, and aggressive marketing practices, as well as "violations of the New Jersey Electric Discount and Energy Competition Act, the state's Consumer Fraud Act, and multiple regulations concerning energy licensing and registration, retail choice consumer protection, anti-slamming requirements and advertising," according to New Jersey's Acting Attorney General Christopher Porino (O'Sullivan 2016)³. Palmco NJ agreed to the following changes: Revising the website and marketing materials including clear information about the price for gas and electric services, revised sales practices, a customer service office in New Jersey to give customers access to live customer service representatives, and a full-time compliance officer.

Palmco Energy PA, LLC ("Palmco PA") received notice from the Pennsylvania Public Utility Commission ("PA PUC") on January 28, 2014 that a complaint was filed by a former customer. An initial decision issued by an Administrative Law Judge ("ALJ") did not find Palmco PA in violation of the PA PUC's regulations and granted Palmco PA's motion to dismiss. The Office of Consumer Advocate intervened and filed exceptions to the ALJ's ruling resulting in the dismissal being reversed and remanded back to the ALJ. In a Decision on Remand, the ALJ found that Palmco PA violated the Standards of Conduct and Disclosure for Licensees in relation to consumer protection (52 Pa. Code §§ 62.114 and 111.12). Palmco PA was ordered to pay a civil penalty in the amount of \$2,000. Palmco PA declined to pursue the matter further, given the size of the penalty.

² Staff accessed the following articles: Iandolo, Mark. "Palmco will pay \$5.28 million to resolve deceptive marketing practices allegations." *Legal Newswire*. N.p., 29 June 2016. Web. 25 Sept. 2016.; O'Sullivan, Jeannie. "Palmco Power Settles NJ's Fraud Complaint for \$5.28M." *Law 360*. N.p., 23 June 2016. Web. 25 Sept. 2016.; Willis, David P. "Palmco must pay \$4.5M over high energy bills." *Asbury Park Press*. N.p., 23 June 2016. Web. 25 Sept. 2016.

³ O'Sullivan, Jeannie. "Palmco Power Settles NJ's Fraud Complaint for \$5.28M." *Law 360*. N.p., 23 June 2016. Web. 25 Sept. 2016.

The New York Attorney General's Office began investigating the business practices of Columbia Utilities, LLC and Columbia Utilities Power, LLC (collectively, "Columbia"), affiliates of Palmco in January of 2009, on behalf of New York consumers. The investigation concluded that Columbia's representatives participated in deceptive business practices. Customers were promised savings equal to or exceeding 15%. When customers contacted Columbia to cancel services, customers were locked into 12-month contracts that they had not received. The Attorney General's investigation also discovered instances in which Columbia representatives misrepresented themselves and/or led customers to believe that they were affiliated with the customer's utility company. As a part of a settlement agreement between Columbia and the Attorney General's office, refunds totaling almost \$2 million dollars were distributed to Columbia's customers. This was an average of about \$700 for each of the 2,700 customers. Prior to reaching a settlement, Columbia also implemented policy changes⁴.

In response to Staff's request of policy changes that have occurred in response to the above mentioned incidents, Palmco described the changes that should alleviate concerns for Delaware consumers. Palmco sought established members of the energy community to oversee compliance and managerial operations of its company in 2016. Palmco also consulted with counsel from GreeneHurlocker for its expertise in the areas of laws and regulations specific to Delaware operations. A minimum of 15% of each representatives sales are verified. For telephone sales, entire calls are reviewed to ensure compliance. For door-to-door sales, a follow up interview is conducted to ensure compliance. Senior employees audit the findings of the review process and check for patterns or trends. New customer relationship management software has been in use by Palmco to improve sales verification, quality assurance, and sales data retention. Palmco has also taken extra care in selecting and training sales vendors.

The Application included a summary of the key operating personnel of the Company. Robert V. Palmese is the Managing Member, Chief Executive Officer and President of Columbia and Palmco companies. He has held this position since 2002. He has fifteen years of energy and managerial experience. Robert A. Blake is the Vice President of Operations and has held this position since 2016. Mr. Blake has over 28 years of energy and managerial experience. Over his career, he has held various positions in management and sales at the following companies: United Illuminating (1980-1998), Connectiv Energy (1998-2000), United Energy (2000-2001), MXenergy (2001-2011), XOOM Energy (2011-2015), and Retail Energy Consulting (2015-2016). Byron M. Farnsworth Jr. is the Vice President of Supply and Scheduling. Mr. Farnsworth has over 29 years in the energy industry and over 19 years of managerial experience. Mr. Farnsworth has held many positions from engineering to Director of Operations at the following companies: Rochester Gas and Electric Corporation (1988-1998), Energetix, Inc./NYSEG Solutions, Inc (1998-2008), MxEnergy Electric, Inc/Constellation energy/Exelon (2008-2012), Your Energy Holdings, LLC (2012-2013), and Iberdola USA (2013-Present). Adam T. Bashe is the Vice President of Business Development and Chief Sales Officer. Mr. Bashe possess over 15 years of managerial experience and five years in the energy industry. Mr. Bashe has cultivated his sales career at the following companies: Destiny Maternity Corporation (2001-2010), Direct Energy (2012-2014), and Strategic Affinity (2010-Present).

Surety Bond

The Company did provide documentation of its line of credit with Citibank for Palmco's affiliates beginning December 3, 2015 and amended to include Palmco and additional affiliates on August 4, 2016.

Verification of Application

⁴ Staff accessed the following press release on the New York Attorney General's website: "<https://ag.ny.gov/press-release/ag-schneiderman-distributes-nearly-2-million-restitution-2700-columbia-utility>."

The original Application contained a signed sworn verification of application with the signature of Robert Palmese, Managing Member. Subsequent filings to the Application have also been verified by Robert Palmese.

Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

Contracts

The Company provided a sample contract for Residential and Small Commercial Retail Electric Customers to provide Electric Supply Service.

Statement of Criminal Activity

The Applicant stated that they have not been charged or convicted of any criminal activity nor have any of its principals or corporation offices. An internet review of the Company and its principal did not return any incidents of criminal activity.

Public Notice

The Company was advised that pursuant to Section 2.2 of the Supplier Rules, the Company is required to publish notice of its filing in two general circulation newspapers within the state of Delaware. The Company provided the appropriate affidavits of publication from each publication. Notice was published in the Delaware State News on December 7, 2016, and the News Journal on December 6, 2016. There were no interventions, protests, or comments filed in the docket within the 20-day notice period.

Legal Review

Staff submitted this Memo for review by the Attorney on February 14, 2017.

Staff Recommendation

Based on Staff's review and analysis of the Application, the Company has satisfied the requirements of the Act and the Supplier Rules. Staff's review of the Company's and its affiliates' operations in other jurisdictions found that the clarity in the Company's contracts could alleviate any ambiguities and confusion on behalf of Delaware consumers. Furthermore, Staff believes that the requested modifications to the contract provide a clear and accurate depiction of customer billing and terms and conditions. The Company has been very forthcoming in Staff's inquiries and resolved all outstanding issues. The Company has also heeded each of Staff's concerns and implemented Staff's modification requests without question. The Company gives no indication that issues, if any arise, will not be handled in a manner consistent with the respect and efficiency displayed to date. The completed Application supports the Company's request for certification. Staff's review and analysis of the Application submitted by the company demonstrates evidence of capability to render service based on the Company's financial, operational, managerial and technical abilities. Therefore, Staff recommends the Commission approve the Application.